IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

Crl.Rev.Pet.No. 1085 of 2003

CRRP.133/2001 of II ADDL. SESSIONS COURT, PALAKKAD
CC.185/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

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REVN. PETITIONER/2ND RESPONDENT/2ND ACCUSED:

RAVEENDRAN, S/O.KUNHIKRISHNAN,
KALLIDUMBIL HOUSE, CHOORAKODE,
VALLAPPUZHA, OTTAPALAM TALUK,
PALAKKAD DIST.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS/PETITIONER & 1ST RESPONDENT/DEFACTO COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING THE SUB INSPECTOR
OF POLICE, PATTAMBI, PALAKKAD DISTRICT.

2. VASUDEVAN, S/O.RAMAN, KALLIDUMBIL HOUSE,
CHOORAKKODE, VALLAPPUZHA, OTTAPPALAM TALUK,
PALAKKAD DIST.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA
PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.R.P.No. 1085 of 2003

ORDER

This revision is at the instance of the second accused. He, along with the first accused, stood indicted for offences under Sections 448 and 324 IPC read with Section 34 thereof. Prosecution examined as many as six witnesses; got marked Exhibits P1 to P6 and got identified MO1.

2. The trial court found that evidence of PWs 1 and 2, who are husband and wife, cannot be accepted and acted upon in the absence of independent evidence to corroborate their testimony; that PW2 deposed as regards the weapon used by the second accused to stab PW1 that it was a knife like weapon and immediately after stabbing PW1, the second accused ran away and therefore, PW2 had no occasion to identify the weapon; that the stick used by the first accused to beat PW1 was not

seized by the investigating agency and that the wound certificate or any other record of treatment at the Medical College Hospital, Thrissur has not been produced, though it is stated that from Valluvanadu Hospital PW1 was referred to the Medical College Hospital, Thrissur for expert management. As regards identification of the accused by PWs 1 and 2 also, the learned Magistrate has expressed doubt as to whether they had actually identified the accused, as in the veranda there was only a kerosene lamp and immediately after inflicting injuries to PW1, the accused took to heels. It was observing such defects that the learned Magistrate acquitted the accused for want of sufficient evidence on the side of the prosecution to bring home the guilt in the accused.

3. In revision, filed by the defacto complainant, the Sessions Judge set aside the acquittal and remanded the case for disposal afresh, according to law. Hence, this revision.

4. PWs 1 and 2 are the witnesses, who have spoken about the incident. PW1 is the injured and PW2 is his wife. The incident took place in the veranda of their house after 9 p.m. on the date of occurrence. There was kerosene lamp burning in the veranda and the witnesses have deposed that they have identified the accused.

5. The learned Magistrate has not examined the question as to whether evidence of PWs 1 and 2 established the occurrence. On the other hand, the learned Magistrate found fault with the prosecution for not examining any independent witness. At the same time, the learned Magistrate himself has observed that there is no chance for any independent person to witness the occurrence, since the incident has taken place in the veranda of the house of PWs 1 and 2 at night. When, obviously, there is no chance for any independent witness, witnessing the occurrence, what the learned Magistrate ought to have considered is as to

whether the evidence furnished by PWs 1 and 2 were reliable, trustworthy and inspiring confidence in the judicial mind and not to find out ways and means to accuse the investigating agency and to find fault with the investigation conducted. The question as to whether identification of the accused by PWs 1 and 2 is acceptable or not was also not considered by the learned Magistrate. There is evidence to show that PWs 1 and 2 and the accused are familiar to each other and that between them there were other litigations also. The learned Magistrate has observed that it is admitted by PW1 that he had filed three cases against the accused. It is the evidence of PW1 that after inflicting one blow with the stick held by the first accused, he caught hold of the stick and snatched it off from the first accused. The learned Magistrate further observed that if this version of PW1 is believed, then there is every possibility of seizing the stick at the time of preparing the scene mahazar.

The fact remains that the stick was never seized. That can only be a fault of the investigating agency in the matter of investigation. Similarly, not collecting the records of treatment from the Medical College Hospital, Thrissur is also a fault on the part of the investigating agency in the proper conduct of the investigation, as PW3, the doctor, who treated PW1 and proved Exhibit P2 wound certificate, has deposed that the patient was referred to the Medical College Hospital for expert management. The learned Magistrate observed that PW2 deposed that the weapon used by the second accused to stab PW1 is a knife like weapon. Hence, according to him, PW2 had no occasion to identify the weapon. This observation also cannot be correct, as the knife like weapon deposed to by PW2 could either be a knife or a dagger. In view of the acquaintance of PWs 1 and 2 with the accused, their identification of the accused in the light of kerosene lamp cannot be faulted with. Light of

kerosene lamp is more than enough to identify a person, who is personally known to a witness.

6. All these aspects show that the learned Magistrate has not properly appreciated the evidence in the case, namely, as to whether on the evidence adduced by the prosecution, the prosecution was able to bring home the guilt in the accused. Precisely, that was the point to be decided by the learned Magistrate. It is because the learned Magistrate has not considered the case in the proper perspective, on the evidence adduced, that the Sessions Court has remanded the matter for fresh consideration by the Magistrate. It is an accepted position that omission of the investigating agency to conduct a proper investigation by itself shall not result in acquittal of the accused. In the circumstances, the remand of the case ordered by the Sessions Judge is justified and does not deserve to be interfered with in revision by this Court. The liberty given

to the trial court to examine any other witness, if required, is also with a view to see that the right of the trial court to invoke Section 311 Cr.P.C. is not taken away and is appropriate, in the circumstances. This revision is, thus, devoid of merit and deserves to be dismissed.

In the result, this Crl.R.P. is dismissed. The trial court shall expedite disposal of the case, taking into account the fact that the case is of the year 1998.

24th January, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Crl.R.P.No.1085 of 2003

ORDER

24th January, 2007